

SEP 27 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NIRBHAIR SINGH,

Petitioner,

v.

PETER D. KEISLER,* Acting Attorney
General,

Respondent.

No. 06-71074

Agency No. A77-421-712

MEMORANDUM**

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 24, 2007***

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Nirbhair Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *see Konstantinova v. INS*, 195 F.3d 528, 529 (9th Cir. 1999), and we deny the petition for review.

The BIA did not abuse its discretion in denying Singh's motion to reopen as untimely where Singh filed the motion more than two years after the BIA's final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and failed to submit evidence of new and material changed country conditions in India that would excuse the late filing, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also Maly v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) (requiring circumstances to "have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution").

PETITION FOR REVIEW DENIED.